

Appl. No. 10/046,632
Amendment and/or Reply
to the Office Action of 1 March 2006

Page 10 of 12

2. REMARKS / DISCUSSION OF ISSUES

Claims 1-17 are pending in the application. Claims 1,9 and 10 are independent claims.

Unless indicated otherwise, claims are amended for non-statutory reasons: to correct one or more informalities, remove figure label number(s), and/or to replace European-style claim phraseology with American-style claim language.

I. Rejection under 35 U.S.C. § 103(a)

Claims 1,2,3 and 9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Edler, et al.* in view of *Kleijn, et al.*

A proper rejection under 35 U.S.C. § 103(a) requires that **all** of the claimed elements be found in the applied art. If a **single** claimed element is not found in the applied art, a prima facie case of obviousness cannot be properly established.

Furthermore, obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is a teaching, suggestion or motivation to do so found in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine* 5 USPQ 2d 1596 (1988). However, hindsight is never an appropriate motivation for combining references and/or the requisite knowledge available to one having ordinary skill in the art. To this end, relying upon hindsight knowledge of applicants' disclosure when the prior art does not teach nor suggest such knowledge results in the use of the invention as a template for its own reconstruction. This is wholly improper in the determination of patentability. *Sensonics Inc. v Aerosonics Corp.*, 38 USPQ 2d 1551-1554 (1996), citing *W.L. Gore & Associates, Inc. v. Garlock, Inc.* 220 USPQ 303.

Claim 10 features:

"...a **sinusoidal estimation unit** adapted to estimate the sinusoidal code data representing the segment $x_m(n)$ from the received samples $x_m(0)$, ..., $x_m(L-1)$);..."

Atty. Docket No. NL 010477

Appl. No. 10/046,632
Amendment and/or Reply
to the Office Action of 1 March 2006

Page 11 of 12

Claims 1 and 9 include a similar feature, with claim 9 including a method of estimating.

The Office Action notes that the reference to *Edler, et al.* does not disclose a sinusoidal estimation unit for estimating the sinusoidal code data representing the segment $x_m(n)$ from the received samples $x_m(0), \dots, x_m(L-1)$. The Examiner contends that this is known concept in the art as taught by *Kleijn, et al.*

The Examiner maintains that the disclosure of *Kleijn, et al.* includes a the sinusoidal estimator as claimed. Applicants again respectfully disagree. The portion of *Kleijn, et al.*, section 8.2 is drawn to a description of a basic sinusoidal coder. (Kindly refer to the first line of the last paragraph of page 37 of the reference.) The reference notes that the spectrum of the speech signal is characterized by a sparse (complex or magnitude) spectrum. The complex spectrum for each windowed signal is obtained using a fast Fourier transform (FFT). The spectrum is separated into magnitude and phase spectra. The magnitudes, phases and frequencies of the spectrum are quantized and sent to a decoder. Thus, the coding comprises providing the quantization of each of the magnitude, phase and frequency of the sinusoidal signal. Estimation is neither taught nor suggested. For at least this reason, it is respectfully submitted that the reference to *Kleijn, et al.* lacks at least the disclosure of at least one of the features of independent claims 1,9 and 10. Accordingly, a *prima facie* case of obviousness has not been established and this rejection should be withdrawn.

Claims 4-8 depend directly or indirectly from claim 1; and claims 11-17 depend from claim 10. For at least the reasons set forth above, it is respectfully submitted that a *prima facie* case of obviousness has not been established. As such, and if for no other reason, the rejection of claims 4-8 and 11-17 is improper as well.

III. Conclusion

In view of the foregoing, applicant(s) respectfully request(s) that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims,

Atty. Docket No. NL 010477

Appl. No. 10/046,632
Amendment and/or Reply
to the Office Action of 1 March 2006

Page 12 of 12

and find the application in condition for allowance. If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and further replies to charge payment or credit any overpayment to Deposit Account Number 50-0238 for any additional fees, including, but not limited to, the fees under 37 C.F.R. §1.16 or under 37 C.F.R. §1.17.

Respectfully submitted,



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Atty. Docket No. NL 010477